

Planning Commission Date: July 28, 2004

Item No.

### MILPITAS PLANNING COMMISSION AGENDA REPORT

---

Category: Public Hearing

Report prepared by: Kim Duncan

Public Hearing: Yes:   X   No:       

Notices Mailed On: 7-16-04

Published On: 7-15-04

Posted On: 7-16-04

---

**TITLE:** **USE PERMIT NO. UP2004-14**

Proposal: A request to operate a restaurant in an existing 1,271 square foot retail space with 30 seats at Milpitas Square shopping center.

Location: 530 Barber Lane (APN 086-01-043)

**RECOMMENDATION:** **Approval with conditions.**

Applicant: Momomi Kato, 1031 East San Carlos Avenue, San Carlos, CA 94070

Property Owner: Milpitas Square, LLC, 39812 Mission Blvd. Suite 203, Fremont, CA 94539

Previous Action(s): "S" Zone and use permit approvals and amendments

Environmental Info: Exempt

General Plan Designation: General Commercial

Present Zoning: General Commercial "C2" District

Existing Land Use: Shopping center

Agenda Sent To: Applicant and owner (both noted above)

Attachments: Site plans, letter of description from applicant

PJ No. 2374

---

## BACKGROUND

On July 12, 1995, the Planning Commission approved Milpitas Square, a 162,550 square foot shopping center, as well as Use Permit No. 1278 for a supermarket that included the sale of all types of alcohol. On April 10, 1995, the Planning Commission a sign program for the center. Since the original approval, the Commission has approved numerous use permits for restaurants.

## Site Description

The Milpitas Square shopping center is located on 17 acres of land at the southwest corner of State Route 237 and Interstate 880, at Barber Lane and the eastern terminus of Bellew Drive. Surrounding uses include two hotels, the Billings Chevrolet dealership, and the Cisco campus and childcare facility. The shopping center contains numerous restaurants, a grocery store, and a variety of other retail uses.

The subject tenant space is located in the southern portion of the shopping center. The space was previously utilized as retail space for a tobacco shop and requires minor tenant improvements in order to operate as a restaurant.



*View of 530 Barber Lane storefront (to right)*

## THE APPLICATION

The application is submitted pursuant to Section 19.03-36 (Restaurants which include on-premise consumption of alcoholic beverages when found clearly incidental to the primary food service) and Section 57.00 (Conditional Uses Permitted by Commission) of the Milpitas Zoning Ordinance.

The applicant proposes to operate a specialty Japanese noodle restaurant, called Maruichi Restaurant, in an existing 1,271 square foot retail tenant space at Milpitas Square. The restaurant

intends to sell traditional Japanese noodle and rice dishes, along with soups, appetizers and beer/wine. The restaurant would operate 7 days a week between the hours of 11:30 a.m. and 10:00 p.m. The front half of the tenant space would include restaurant patron seating for 30 at tables, booths and a counter. The rear half of the tenant space would contain a kitchen (with pot range, work table and dish washer), handicapped accessible restroom, and sinks (mop, floor, hand, and tub), as noted on Sheet A2.

### **Conformance with the General Plan**

The proposed project complies with the General Commercial designation of the City's General Plan in terms of land use. The use does not conflict with any General Plan Principles and Policies, and is consistent with Implementing Policy 2.1-I-3, which encourages economic pursuits which will strengthen and promote development through stability and balance. It is also consistent with Policy 2.1-I-6, which endeavors to maintain a balanced economic base that can resist downturns in any one economic sector.

### **Conformance with the Zoning Ordinance**

The proposed project is located in the General Commercial ("C2") District and is permitted conditionally in this district upon approval of a conditional use permit. The intent of the "C2" district is to provide for a wide range of retail sales and personal services which are oriented to the automobile customer, afford a pleasant shopping environment, and include uses in which pedestrians may walk to several stores in a center, such as Milpitas Square shopping center. The proposed restaurant is consistent with the intent of the "C2" District in that it provides retail shoppers the opportunity for restaurant dining within the shopping center. In addition, this project is consistent with the "C2" District in that the on-premises consumption of alcoholic beverages is a conditional use in this district, pursuant to Section 19.03-36 of the Milpitas Zoning Ordinance.

## **ISSUES**

### **Parking**

Milpitas Square was originally developed with 813 required parking spaces calculated at a ratio of 1 space per 200 square feet for retail use. However, the owner anticipated a fair amount of restaurants to occupy the multi-tenant shopping center and provided 1,115 parking spaces, thus creating a surplus of 302 parking spaces. The project applicant is proposing to operate a restaurant in the 1,271 square foot tenant space and, based on retail parking ratios, 6 parking spaces are currently provided. However, parking requirements for restaurant uses (1 space/3 seats, plus additional 10% for employee parking) require more parking than retail uses and the proposed 30 seat restaurant will require a total of 11 parking spaces, which is 5 more spaces than provided. According to staff research, 30 parking spaces remain of the original 302 surplus parking spaces, therefore, there is adequate parking to accommodate Maruichi Restaurant's requirement for 5 additional parking spaces.

### **Solid Waste**

Waste generated from the proposed use may produce odors and non-point pollution source issues. Food products that spoil or are spilled may also turn into waste. Food wastes from this use are likely to generate unpleasant odors if not handled properly. Given this likelihood, **staff recommends** a condition that all trash be double-bagged and transported to the on-site trash facilities at the rear of the shopping center. Furthermore, **staff recommends** that the trash receptacle area be kept clean and all spills cleaned-up immediately.

As previously mentioned in the background section, there are numerous restaurants that exist at Milpitas Square shopping center, which have the tendency to produce a large amount of waste, both solid and tallow (food grease and oils). The trash enclosures at this shopping center are currently operating at full capacity in terms of available space for trash and recycle bins, which causes concern for the Utility/Engineering Section. Maximum capacity for trash hauling may be reached to additional businesses with the increase frequency of services. Therefore, **Engineering and Planning staff recommend** a special condition to increase the frequency of trash service collected from 3 times a week to 4 times a week and maintenance of a tallow account for grease collection be established. Evidence of this will be required prior to occupancy permit issuance.

In addition, Milpitas Square has been subject to administrative actions resulting in six (6) citations for lack of compliance with the City's Urban Runoff Code (MMC Title XI-Chapter 16) due to tallow grease spills. A recent site visit conducted by staff revealed a tallow enclosure constructed on the project site without City approval. **Staff recommends**, as a condition of approval, the property owner secure City approval for a tallow enclosure prior to issuance of building permits for the proposed restaurant.

### **Neighborhood/Community Impacts**

The proposed restaurant is expected to have a positive community impact by providing a unique service to the City of Milpitas. The restaurant will attract residents to the Milpitas Square, which will support other retail and service establishments in the area. In addition, the hours of operation are similar and consistent with surrounding uses in Milpitas Square and the restaurant is not expected to generate any additional noise levels than what currently exists. Based on this, previous discussions in the report, and the conditions imposed upon the project, the proposed use is not anticipated to affect parking and traffic, or generate odors or health and safety hazards impacting the surrounding area and therefore will not be detrimental or injurious to the public health, safety and general welfare.

### **Conformance with CEQA**

The project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 ("Existing Facilities", interior or exterior alterations involving such things as interior partitions, plumbing and electrical conveyances) of the Environmental Quality Act (CEQA) guidelines.

**RECOMMENDATION**

Close the public hearing. Approve Use Permit No. UP2004-14 based on the findings and special conditions listed below.

**FINDINGS**

1. The proposed use is consistent with the City of Milpitas General Plan in terms of land use and is consistent with Implementing Policies 2.a-I-3 and 2.a-I-6, which encourage economic pursuits that strengthen and promote development through stability and balance and that which endeavors to maintain a balanced economic base that can resist downturns in any one economic sector.
2. The proposed use is consistent with the intent of the General Commercial "C2" District which promotes stable, attractive commercial development which will afford a pleasant shopping environment and includes uses that may be conducted by people walking to several stores in a center and in that the district permits such uses with a Use Permit.
3. The proposed use is not expected to generate an increase in noise levels and, as conditioned, is not anticipated to affect parking and traffic, or generate odors or health and safety hazards impacting the surrounding area or nearby residential neighborhoods and therefore will not be detrimental or injurious to the public health, safety and general welfare.
4. The proposed project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 ("Existing Facilities", interior or exterior alterations involving such things as interior partitions, plumbing and electrical conveyances) of the State CEQA Guidelines.

**SPECIAL CONDITIONS**

1. This Use Permit No. UP2004-14 approval is for a new 1,271 square foot restaurant located at 530 Barber Lane, as shown on approved plans dated July 28, 2004 and as amended by these special conditions. Minor changes, as per Section 42.10-2 of the Milpitas Zoning Ordinance, to approved plans may be approved by the Planning Division staff. (P)
2. This use shall be conducted in compliance with all appropriate local, state, and federal laws and regulations. (P)
3. If at the time of application for building permit there is a private job account balance due to the City for recovery of fees, review of permits will not be initiated until the balance is paid in full. (P)
4. This approval does not include any signs. Any new signage shall adhere to the approved sign program for Milpitas Square and shall be submitted and approved by the Planning Division. (P)

5. The trash and dumpster areas shall be maintained and kept clean by double-bagging all food garbage produced by the market and by frequent sweeping and disposal of any spilled solid waste. (P)
6. Prior to occupancy, a sign measuring at least 8 1/2 inches by 11 inches shall be placed in a conspicuous location near the restaurant front entrance stating "Maximum restaurant seating: 30 as per Use Permit No. UP2004-14 granted by the Planning Commission on July 28, 2004." Minimum letter height of "Maximum restaurant seating:" shall be at least 3/4 inch high. (P)
7. Prior to issuance of building permits for the restaurant, the property owner shall submit plans and obtain City approval for a new tallow enclosure. (P)
8. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)
9. Applicant shall be responsible for the trash collection and recycling services account. Prior to occupancy permit issuance, the applicant shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI for commercial services:
  - a. An adequate level of service for trash collection, minimum of one 6-cyd bin collected 4X/week.
  - b. An adequate level of recycling collection.
  - c. Applicant shall maintain a Tallow account, and keep the bins clean and inside the enclosure. (E)
10. After the applicant has started its business, BFI commercial representative shall determine the adequacy of the solid waste level of services. If services found to be inadequate, applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234, x-264. (E)
11. The developer shall submit a Sewer Needs Questionnaire and/or Industrial Waste Questionnaire with the building permit application and pay the related fees prior to Building Permit issuance by the Building Division. Contact the Land Development Section at (408) 586-3329 to obtain the form(s). (E)

Planning Division = (P)

Engineering = (E)

## Explanation Regarding Proposal

This restaurant will be converted from the retail store. The restaurant serves mainly Japanese noodles and some appetizers, including beer and wine. Hours of operation will be 11:30 am to 10:00 pm, 7 days a week. There will be 30 seats in the restaurant. The owner of this Japanese noodle restaurant is Tomisushi Restaurant Inc.

ADDRESS: 530 BARBER LN.  
MILPITAS, CA 95035

**RECEIVED**

JUL 06 2004

CITY OF MILPITAS  
PLANNING DIVISION

\*3

## GENERAL NOTES

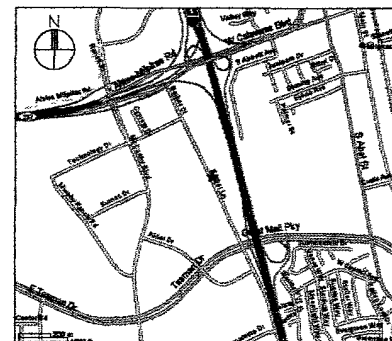
- Design data are based on 2001 CBC, CMC, CFC, CEC, CPC and City of Milpitas adopted codes and ordinances.
- All construction work shall comply with the applicable federal, state and local codes, laws and regulations.
- Contractor shall verify existing conditions at job site. Report all discrepancies to the Architect prior to proceeding with the work.
- Verify locations of all utility lines, conduits, surface or subsurface structures, etc., of any nature that may be affected by the work before starting the work.
- Should any of the above items be disturbed, disconnected, or damaged during the work, bear all expenses of whatever nature arising from such disturbance or the replacement or repair thereof, and replace or repair such items as required.
- Floor and existing / new walls to be ready for new finish installation and application. All surfaces shall be cleared and free of debris and adhesive.
- Contractor shall protect new or existing work, equipment, materials and finishes. Damaged items shall be repaired or replaced at the expense of the Contractor.
- Contractor shall, at all times during the course of the work, keep the construction area, the Owner's premises, including streets and other areas used by the contractor, clean and free from accumulation of waste materials and rubbish. Contractor shall provide dust control measures as required.
- At completion of the work, remove from the building and the premises all surplus materials and debris, and clean up thoroughly to the Owner's satisfaction.
- All dimensions shown on floor plan are to face of finish, unless otherwise noted.
- All open joints, penetrations and other openings in the building envelope shall be sealed, caulked, gasketed or weather-stripped to limit air leakage.
- Supply and installation of fire extinguishers are part of this contract. Fire extinguishers are to be installed per Fire Department requirements by the Contractor.

# MARUICHI RESTAURANT

530 BARBER LN  
MILPITAS, CA 95035

## DRAWING INDEX

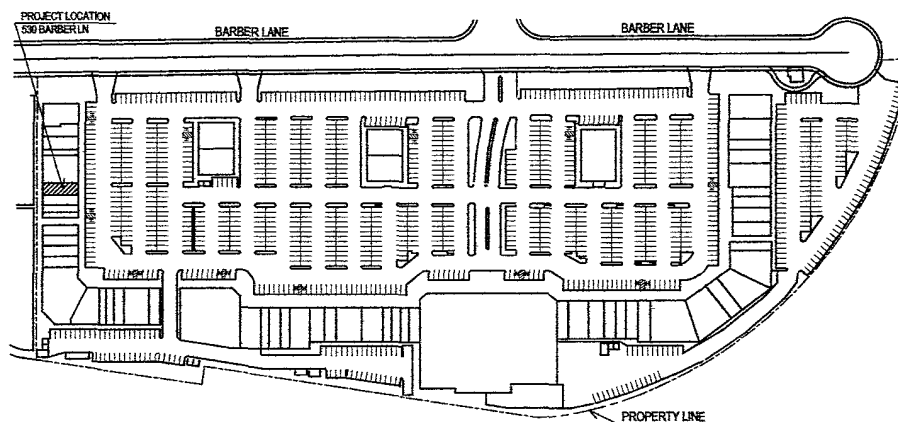
- A-1 TITLE SHEET / GENERAL NOTES / PROJECT INFORMATION / SITE PLAN  
A-2 FLOOR PLAN / EQUIPMENT SCHEDULE  
A-3 ROOF PLAN / SECTION



VICINITY MAP  
NO SCALE

## PROJECT INFORMATION

- |                         |   |
|-------------------------|---|
| 1. PROJECT NAME         | MARUICHI RESTAURANT   |
| 2. PROJECT ADDRESS      | 530 BARBER LN. MILPITAS, CA 95035   |
| 3. OWNER                | MILPITAS SQUARE, LLC.<br>39812 MISSION BLVD., STE. 203<br>TEL : 510-226-6338  |
| 4. TENANT               | TOMISUSHI RESTAURANT INC.<br>4336 MOORPARK AVE.<br>TAKA OGAWA<br>TEL : 408-257-4722   |
| 5. APPLICANT            | DESIGN - I ( DIVISION OF KITAMI )<br>1031 E. SAN CARLOS AVE. SAN CARLOS, CA 94070<br>TEL : 650-591-7651<br>FAX : 650-591-2762   |
| 6. SCOPE OF WORK        | TENANT IMPROVEMENT<br>ALTERNATION OF EXISTING -<br>RETAIL SPACE INTO RESTAURANT<br>INSTALL KITCHEN EQUIPMENT<br>INSTALL COUNTER<br>MODIFY EXISTING CEILING<br>MODIFY EXISTING BATHROOM<br>ELECTRICAL WORK FOR OUTLET & LIGHTING<br>INSTALL NEW EXHAUST HOOD,<br>DUCT, FAN, MAKE-UP AIR FAN & DUCT |
| 7. PROJECT DATA         | FLOOR AREA 1271 SF.<br>OCCUPANT LOAD 30<br>NUMBER OF EMPLOYEES 3  |
| 8. OCCUPANCY GROUP      | B   |
| 9. TYPE OF CONSTRUCTION | TYPE V - N  |



SITE LOCATION PLAN  
SCALE : 1" = 200' - 0"

## PARKING ANALYSIS DATA

MILPITAS SQUARE : TOTAL SQ.FT. = 162,202  
RETAIL SQ. FT. = 55,929  
RESTAURANT SQ.FT. = 67,459  
RANCH 99 = 33,814  
PROJECT LOCATION SQ.FT. = 1,271

**PARKING AGREEMENT** : THIS IS A PART OF THE LEASE AGREEMENT BY AND BETWEEN MILPITAS SQUARE, LLC, AS "LANDLORD", AND TOMISUSHI RESTAURANT, INC. AS "TENANT", FOR THE PROPERTY KNOWN AS BUILDING A, UNIT 580, 530 BARBER LANE, MILPITAS, CA 95035.

- CURRENT NUMBER OF PARKING SPACE ALLOCATED AS RETAIL SPACE OF 530 BARBER LN. : 6.3
- ADDITIONAL PARKING SPACES TO BE ALLOCATED TO TENANT BY LANDLORD : 5
- TOTAL PARKING SPACE AFTER ALLOCATION : 6 + 5 = 11

## PARKING CALCULATIONS BY SQ.FT.

DINING AREA : 448.5 SQ.FT. (See Detail of Dining sq.ft. on A-2)  
448.5 / 15 = 29.9 → 30 SEATING

PARKING REQUIRE  
30 / 3 = 10 + 10% = 11 PARKING SPACES

RECEIVED

JUL 06 2004

CITY OF MILPITAS  
PLANNING DIVISION

DESIGN - I  
DIVISION OF KITAMI

1031 E. SAN CARLOS AVE. SAN CARLOS, CA 94070  
TEL : (650) 591-7651

MARUICHI RESTAURANT

530 BARBER LN.  
MILPITAS, CA 95035

DRAWN  
CHECKED  
DATE 6/7/04  
SCALE AS NOTED

A-1



# PARKING CALCULATIONS BY SQ.FT.

## DINING AREA

$(19'-10 \frac{3}{4}" \times 28'-3") - (21'-3" \times 3'-0") - (3'-10" \times 4'-5") - (6'-0" \times 5'-6")$

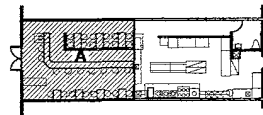
$562.2 - 63.8 - 16.9 - 33 = 448.5 \text{ SF.}$

A B C D

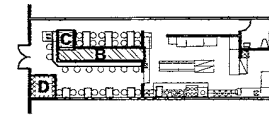
$448.5 / 15 = 29.9$  (30 SEATING)

PARKING REQUIRE FOR THIS RESTAURANT

$30 / 3 = 10 + 10\% = 11 \text{ PARKING SPACES}$



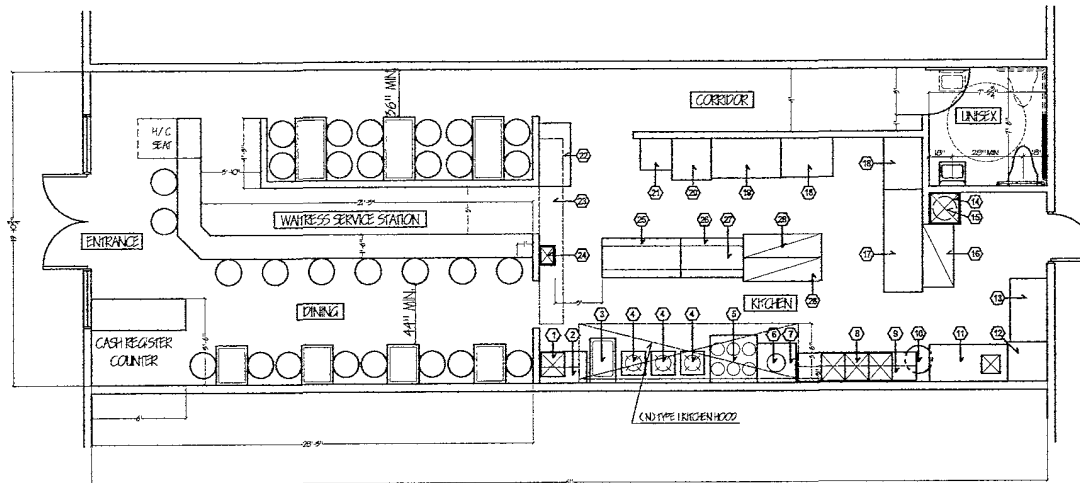
A =  $19'-10 \frac{3}{4}" \times 28'-3" = 562.2 \text{ sq.ft.}$



B =  $21'-3" \times 3'-0" = 63.8 \text{ sq.ft.}$

C =  $3'-10" \times 4'-5" = 16.9 \text{ sq.ft.}$

D =  $6'-0" \times 5'-6" = 33 \text{ sq.ft.}$



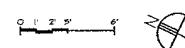
## LEGEND

- EXISTING TO REMAIN
- NEW CONSTRUCTION
- EXISTING TO BE REMOVED
- (E) EXISTING
- (I) EQUIPMENT ITEM NUMBER



## FLOOR PLAN

SCALE :  $1/8" = 1'-0"$



## EQUIPMENT SCHEDULE

MARK	QTY	DESCRIPTION	W	D	H
1	1	PREP SINK	38 1/2"	24"	36"
2	1	S.S. SHELF	30"	12"	
3	1	FRYER	20-5/8"	39-3/4"	45-1/2"
4	3	POT RANGE	18"	18"	
5	1	RANGE W/STAND	36"	36"	36"
6	1	RICE COOKER	18"	21"	17-1/2"
7	1	WORK TABLE	30"	30"	36"
8	1	3 COM. SINK	91"	22-1/2"	36"
9	1	S.S. SHELF	90"	12"	
10	1	GARBAGE CONTAINER	22"	22"	27-3/4"
11	1	DISH TABLE	60"	28"	36"
12	1	DISH WASHER	30"	30"	36"
13	1	CLEAN TABLE	48"	48"	36"
14	1	MOP SINK	24"	24"	
15	1	WATER HEATER			

16	1	WIRE SHELVING	48"	24"	
17	1	REF.	78"	29-1/2"	
18	2	FREEZER	39-1/2"	29-1/2"	
19	1	WORK TABLE	54"	30"	
20	1	DRINK REF.	30"	31-1/2"	
21	1	ICE MAKER	24"	24"	
22	1	WAITRESS COUNTER CABINET	48"	24"	36"
23	1	WALL CABINET	140-3/4"	18"	36"
24	1	HAND WASH SINK W/ SOAP DISP. & TOWEL HOL.	15"	12"	
25	1	WORK TOP REF.	60"	30"	36"
26	1	WORK TABLE	48"	30"	36"
27	1	S.S. SHELF (STAND)	108"	18"	36"
28	2	WIRE SHELVING	60"	18"	66"
29		SPACE			
30		SPACE			

## DESIGN - I

DIVISION OF DESIGN  
1001 E. SAN CARLOS AVE. SAN CARLOS, CA 94070  
TEL: (650) 591-7851

## MARUICHI RESTAURANT

520 BARBER LN.  
MILPITAS, CA 95035

DRAWN

CHECKED

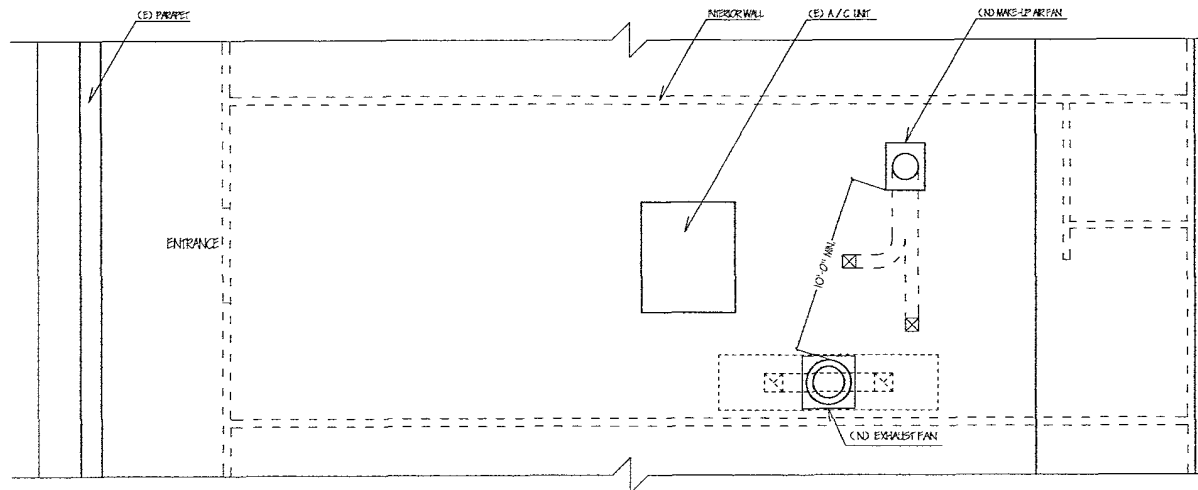
DATE 6/7/04

SCALE 1/8"=1'-0"

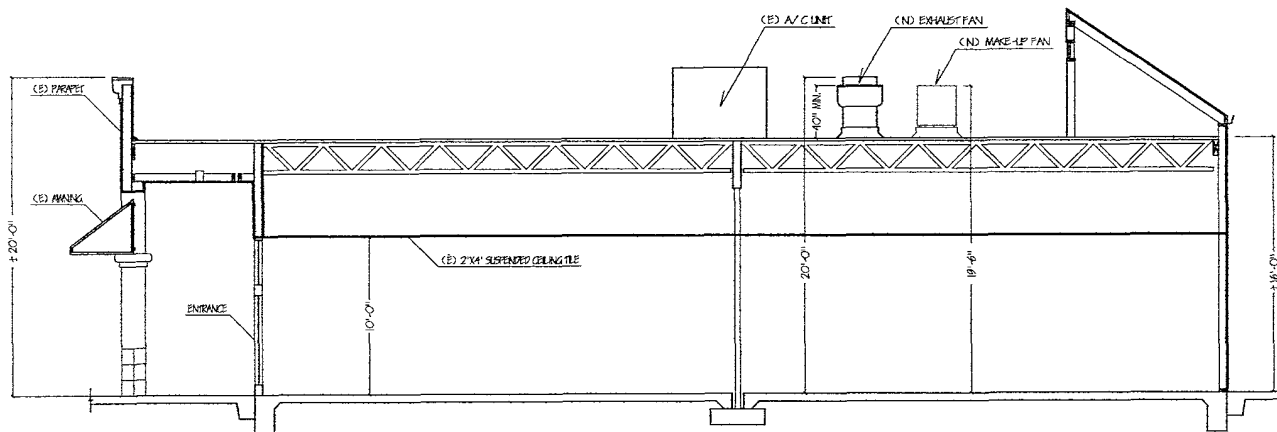
FORM NO.

REVISION

A-2



ROOF PLAN  
SCALE : 1/8" = 1'-0"



CROSS SECTION  
SCALE : 1/8" = 1'-0"

DESIGN - I  
DIVISION OF RETAIL

101 E SAN CARLOS AVE. SAN CARLOS, CA 94070  
TEL: (408) 591-7851

MARUCHI RESTAURANT

550 BARBER L.N.  
MILPITAS, CA 95035

DRAWN:  
CHECKED:  
DATE: 6/7/04  
SCALE: 1/8" = 1'-0"  
JOB NO.:  
SHEET:

A-3